



Department
for Work &
Pensions



[REDACTED]

Senior Commercial Category Manager
Department for Work and Pensions
3rd Floor, Hartshead Square
Sheffield
S1 2FD

www.dwp.gov.uk

26th June 2020

Twin Training International Ltd
The Greenwich Centre
12 Lambarde Square
London
SE10 9GB

CHANGE AUTHORISATION LETTER: CV04 - AMENDED

Dear [REDACTED]

Various contracts (as amended) between the (1) Secretary of State for Work and Pensions (the “Authority”) and (2) Twin Training International Ltd (the “Contractor”) set out at Schedule 1 (the “Contracts”)

Contract amendments that are needed to address the consequences of COVID-19, in accordance with Procurement Policy Notes (PPNs) 01/20, 02/20, and 04/20

1. The Authority wishes to amend the CV04 Contracts set out at Schedule 1 to this letter in accordance with CV04 and the schedules attached to CV04.
2. Terms used but not otherwise defined in this letter have the same meaning as set out in the CV04 Contract to which the term refers.

Background

3. The purpose of CV04 is to implement contract modifications that are needed to address Covid Related Hardship. This includes the implementation of a payment model to replace CV03 Interim Payments.
4. The Authority and the Contractor acknowledge that the modifications outlined in CV04 are in accordance with the policy set out in PPN 01/20, PPN 02/20, and PPN 04/20, and that both parties shall act in good faith and work together towards the principles set out in PPN 01/20, PPN 02/20, and PPN 04/20.
5. The Contractor acknowledges that any relief given to it under CV04 is at the sole discretion of the Authority.
6. The Authority reasonably anticipates that the Procurement Regulations will apply to CV04 and the Parties shall ensure that there is a lawful basis for agreeing CV04 under the Public Contracts Regulations 2015 and/or any applicable procurement rules. Due to the current

COVID-19 pandemic, this may include in particular justifications under Regulation 72 and Regulation 32 of the Public Contracts Regulations 2015 or such other applicable or equivalent provision.

7. CV04 shall be interpreted and construed so that it varies each CV04 Contract set out at Schedule 1 individually.
8. Each CV04 Contract, including any previous variations, will remain effective and unaltered except as amended by CV04.

Definitions

9. The following terms shall have the meaning as set out below and shall be incorporated into each CV04 Contract:

“Authority” and **“Contracting Body”** means the Secretary of State for Work and Pensions.

“Covid Monthly Payment” means the payment(s) which the Authority may make to the Contractor during the Covid Relief Period in accordance with Schedule 2 (Payment Model).

“Covid Related Hardship” means that as a result of the COVID-19 pandemic the Contractor’s ability to meet its contractual obligations under the CV04 Contract have been adversely affected.

“Covid Relief Period” means the period from the 1 April 2020 until the Relief Expiry Date.

“CV03” means the contract variation that the Authority and the Contractor entered into in respect of CV04 Contracts and SES Contracts, for the purpose of giving immediate interim relief to the Contractor.

“CV03 Contract” means a contract identified in Table 1 of Schedule 1 to CV03.

“CV03 Contracts” means all the contracts identified in Table 1 of Schedule 1 to CV03.

“CV03 Interim Payment(s)” means any payments made to the Contractor under CV03.

“CV04” means this letter and the terms set out in it (including the attached Schedules).

“CV04 Contract” means a contract identified in Schedule 1 to CV04.

“CV04 Contracts” means all the contracts identified in Schedule 1 to CV04.

“CV04 Variation Date” means the date the second Party signs CV04.

“Procurement Regulations” means the Public Contracts Regulations 2015.

“PPN 01/20” means Procurement Policy Note 01/20, as updated or amended from time to time, setting out information and guidance for public bodies on how they should respond to COVID-19 and the commercial actions they can take.

“PPN 02/20” means Procurement Policy Note 02/20, as updated or amended from time to time, setting out information and guidance for public bodies on how they may amend payment provisions in contracts or consider other contractual relief in order to assist suppliers to combat the impact of COVID-19.

“PPN 04/20” means Procurement Policy Note 04/20, as updated or amended from time to time, setting out information and guidance for public bodies on payment of their suppliers and to ensure service continuity during the current COVID-19 outbreak.

“Relief Expiry Date” means 31 March 2021, or such other date as agreed between the Authority and the Contractor and as set out in a Relief Expiry Date Amendment Notice.

“Relief Expiry Date Amendment Notice” means a notice that the Authority sends to the Contractor which sets out any amended Relief Expiry Date.

“SES Contract” means a Specialist Employability Support contract between the Authority and a Contractor.

“Sub-contract” means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services (or any part thereof) or facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services (or any part thereof).

“Sub-contractor” means any third party with whom:

- (a) the Contractor enters into a Sub-contract; or
- (b) the employees, staff, servants or agents of that third party; or
- (c) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party.

CV03 and CV04

10. In consideration of the rights and obligations created, granted and assumed by the Authority and the Contractor to each other pursuant to CV04, the parties have agreed to enter into CV04.
11. Notwithstanding any other term of the CV04 Contracts, the Parties agree to incorporate CV04 into each CV04 Contract. Each CV04 Contract will be modified in accordance with the terms of CV04.
12. CV03 and CV04 will expire after the Relief Expiry Date, subject to paragraph 13 and any further agreement(s) entered into between the Parties.
13. The following provisions of CV04 shall survive its expiry:
 - i. paragraph 11 of Schedule 2 (Payment Model),
 - ii. paragraph 3 of Annex 4 to Schedule 2 (Payment Model),
 - iii. Schedule 3 (Contractor Code of Conduct), and
 - iv. any provisions of CV04 which the Authority determines shall survive its expiry provided that the Authority has notified the Contractor in writing prior to the Relief Expiry Date of the provisions which will survive such expiry.
14. If CV03 expires in accordance with paragraph 12, the modifications that were made to the CV03 Contracts by CV03 are negated.
15. Expiry of CV03 shall be without prejudice to any rights, remedies or obligations accrued under each CV03 Contract prior to the expiry of CV03. Nothing in each CV03 Contract shall prejudice the right of either Party to recover any amount outstanding at such expiry.
16. If CV04 expires in accordance with paragraph 12, the modifications that were made to the CV04 Contracts by CV04 are negated, subject to paragraph 13.

17. Expiry of CV04 shall be without prejudice to any rights, remedies or obligations accrued under each CV04 Contract prior to the expiry of CV04. Nothing in each CV04 Contract shall prejudice the right of either Party to recover any amount outstanding at such expiry.

Relief Expiry Date

18. The Relief Expiry Date is the last day of the Covid Relief Period which shall be:

- i. the 31 March 2021, or
- ii. such other date as agreed between the Authority and the Contractor and as set out in a Relief Expiry Date Amendment Notice.

19. If the Authority and the Contractor have agreed to amend the Relief Expiry Date in accordance with paragraph 18(ii), the Authority will send a Relief Expiry Date Amendment Notice to the Contractor which sets out the amended Relief Expiry Date.

20. The Authority and the Contractor can agree to withdraw a Relief Expiry Date Amendment Notice.

21. Where the Authority and the Contractor have withdrawn a Relief Expiry Date Amendment Notice:

- i. the Relief Expiry Date in that Relief Expiry Date Amendment Notice is set aside,
- ii. where the Authority and the Contractor then agree a new Relief Expiry Date, the Authority must then send a further Relief Expiry Date Amendment Notice to the Contractor which sets out that new Relief Expiry Date, and
- iii. if the Authority and the Contractor have not agreed to a new Relief Expiry Date within 10 Working Days of the withdrawal of the Relief Expiry Date Amendment Notice referred to in paragraph 21(i), then the Relief Expiry Date shall be the Working Day after that period has elapsed.

Schedules attached to CV04

22. The following Schedules are attached to CV04:

- i. Schedule 1: Contracts modified by CV04
- ii. Schedule 2: Payment Model
- iii. Schedule 3: Contractor Code of Conduct
- iv. Schedule 4: Financial Distress
- v. Schedule 5: Additional Management Information
- vi. Schedule 6: **NOT USED**
- vii. Schedule 7: Performance Enhancement
- viii. Schedule 8: Removal of Certain Contract Requirements
- ix. Schedule 9: **NOT USED**
- x. Schedule 10: Provider Guidance
- xi. Schedule 11: **NOT USED**

Miscellaneous

23. The terms of CV04 take effect from the beginning of the Covid Relief Period.

24. CV04 shall not constitute a waiver of any right or remedy of the Authority or the Contractor arising before, during or after CV04, except to the extent set out in CV04.
25. The Authority and the Contractor agree that any event arising from COVID-19 shall not give rise to any force majeure or frustration rights set out in the CV04 Contract to the extent that such rights are mitigated by CV04.
26. If there is an inconsistency between any of the provisions of CV04 and the provisions of the CV04 Contract, including for the avoidance of doubt, CV03, the provisions of CV04 shall prevail.
27. The provisions of each CV04 Contract shall, save as amended in CV04, continue in full force and effect, and shall be read and construed as one document with CV04.
28. The Authority shall not exercise its rights under Schedule 7 of CV04 in respect of any failure by the Contractor to meet Minimum Performance Levels or Customer Service Standards from 1 April 2020 to 31 October 2020.

Please confirm your acceptance of CV04 by countersigning this letter and uploading a scanned copy to the Jaggaer (DWP e-portal) fileshare folder named **[REDACTED]**

If you have any queries, please contact the team on EMPLOYMENTCATEGORY.COVID19@DWP.GSI.GOV.UK

Yours faithfully,

[REDACTED]
Senior Commercial Category Manager
For and on behalf of the Authority

We hereby acknowledge receipt and accept the terms of CV04.

Signed: ____ **[REDACTED]**

For and on behalf of the Contractor

Name:

Position:

Date:

Schedule 1: Contracts modified by CV04

The following contracts are modified in accordance with CV04:

Contract Type	Contract Reference	Contract Name/Description	Contract Start
RPC: Reducing Parental Conflict	ECM_6785	Reducing Parental Conflict Programme Face to Face Provision CPA 4 Dorset	11/01/2019

Key

RPC: Reducing Parental Conflict

Schedule 2: Payment Model

Contract Type, Contract Provision	Modification
RPC, Schedule 4	<p><i>Schedule 4 in each of the CV04 Contracts is replaced with Schedule 4 - Fees and Payment, as below.</i></p> <p>SCHEDULE 4 – FEES AND PAYMENT</p> <p>1 DEFINITIONS</p> <p>In this Schedule, the following definitions shall apply:</p> <p>“Adjust” means when the Authority increases or decreases the Bridging Amount for a Subsequent CV04 Period to take account of any difference between:</p> <ul style="list-style-type: none"> (a) the Bridging Amount for the First CV04 Period, and the CV03 Interim Payments that the Authority has made or will make to the Contractor, or (b) a recalculation of the Bridging Amount for a previous CV04 Period, and the Bridging Amount previously calculated for that CV04 Period. <p>“Allowed Costs” means any costs which the Authority reasonably determines:</p> <ul style="list-style-type: none"> (a) have been incurred, or will be incurred, by the Contractor during the Covid Relief Period, and (b) fall within paragraph 1 of Annex 1. <p>“Baseline” means the set of costs used for the purposes of</p>

	<p>paragraph 9.</p> <p>“Bridging Amount” means the Allowed Costs that the Authority reasonably determines the Contractor has incurred, or will incur, during a CV04 Period, as well as:</p> <ul style="list-style-type: none"> (a) any Adjustment made under paragraph 6.5, (b) any reduction under paragraph 6.6 for any overpayment, and (c) any additional sum added under paragraph 6.7. <p>“Cost Claim” means an instance of cost (within a Cost Line) which the Contractor claims it has incurred or will incur during the Covid Relief Period.</p> <p>“Cost Claim Error Rate” means in respect of each Cost Claim Validation Period, the percentage of failures, errors and/or over-claims which the Authority shall be entitled to assume have been made in respect of all of the Cost Claims which have been made by the Contractor (in respect of any CV04 Contract) in that Cost Claim Validation Period and which shall be calculated as follows: (A/B) x 100 where: A = the value of Cost Claim Fails for that Cost Claim Validation Period in respect of Cost Claims (as reasonably determined by the Authority); and B = the value of Cost Claims comprised in the Cost Claim Sample, expressed as a percentage.</p> <p>“Cost Claim Fail” means a Cost Claim in respect of which the Authority reasonably determines that such Cost Claim is not within the corresponding Cost Line and/or the Allowed Costs, as</p>
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	<p>reasonably determined by the Authority, for the relevant Cost Claim Validation Period in which such Cost Claim has been made by the Contractor.</p> <p>“Cost Claim Pass” means a Cost Claim in respect of which the Authority reasonably determines that such Cost Claim is within the corresponding Cost Line and/or the Allowed Costs, as reasonably determined by the Authority, for the Cost Claim Validation Period in which such Cost Claim has been made by the Contractor.</p> <p>“Cost Claim Sample” shall have the meaning given to it in paragraph 11.</p> <p>“Cost Claim Validation Period” means such period of time as the Authority notifies the Contractor from time to time for which period the Authority shall validate Cost Claims made to the Contractor in accordance with CV04. For the avoidance of doubt such notification may be made before, during or after the Authority takes any action pursuant to paragraph 11.</p> <p>“Cost Escalation Board” means the body described in paragraph 3 of Annex 4.</p> <p>“Cost Escalation Dispute” means a Dispute in respect of a Cost Claim where there is a variance equal to or greater than the higher of 10% or £6,000 between what the Authority reasonably determines the Cost Claim to be and what the Contractor claims the Cost Claim should be. The values of 10% and £6,000 are subject to reduction at the reasonable discretion of the Authority. The values of 10% and £6,000 are also subject to increase following mutual agreement between the Authority and the Contractor.</p> <p>“Cost Escalation Notice” means a written notice served by one Party on the other stating that the Party serving the notice believes there to be a Cost Escalation Dispute.</p>
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	<p>“Cost Escalation Process” means the process that the Authority and the Contractor will follow in resolving any Cost Escalation Disputes, as set out at Annex 4.</p> <p>“Cost Line” means an area of expenditure as identified in column 1 of Annex 2.</p> <p>“Covid Data Return” means the Open Book Data that the Contractor provides to the Authority, in the Covid Data Return Template, for the purpose of enabling the Authority to calculate the Bridging Amount.</p> <p>“Covid Data Return Template” means the template set out at Annex 3, as amended from time to time by the Authority, which the Contractor is required to complete when it submits a Covid Data Return.</p> <p>“Covid Data Return Timetable” shall have the meaning given to it in paragraph 4.5.</p> <p>“Covid Monthly Payment” means the payment made by the Authority to the Contractor in each Month of a Subsequent CV04 Period, which the Authority calculates by dividing the Bridging Amount by the number of Months covered by the Subsequent CV04 Period.</p> <p>“CV04 Period” means the Month or Months used by the Authority for the calculation of the Bridging Amount and Covid Monthly Payments.</p> <p>“Disallowed Costs” means any costs which the Authority reasonably determines:</p> <p style="padding-left: 40px;">(a) have been incurred, or will be incurred, by the Contractor during the Covid Relief Period, and</p>
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(b) fall within paragraph 2 of Annex 1.

“First CV04 Period” means the CV04 Period from 1 April 2020 to 30 June 2020.

“Subsequent CV04 Period” means a CV04 Period that is not the First CV04 Period.

“Variance Costs” means any costs reasonably designated by the Authority as such in accordance with paragraph 9.1(b).

2 FEES

2.1 In consideration of the Contractor carrying out its obligations under CV04, including but not limited to the provision of the Services during the Covid Relief Period, the Authority shall pay the Fees to the Contractor in accordance with the provisions of this Schedule via a self-billing process approved by HMRC.

2.2 The Contractor acknowledges and agrees that it shall have no entitlement whatsoever to remuneration in respect of the Services delivered during the Covid Relief Period other than the Fees.

2.3 The Fees shall comprise the Covid Monthly Payments.

2.4 The Fees will not be amended or adjusted, unless the Authority and the Contractor agree to such amendment or adjustment in accordance with the Change Control Procedure.

2.5 The Authority shall have no obligation to pay any Fees to the Contractor after the last day of the Payment Tail Period.

2.6 Nothing in this Schedule shall affect the Authority’s obligation to make, and the Contractor’s right to receive, any outstanding CV03 Interim Payments under CV03.

3 BRIDGING AMOUNTS, COVID MONTHLY PAYMENTS, AND CV03 INTERIM PAYMENTS

- 3.1 The Authority will calculate the Bridging Amount for each CV04 Period in accordance with paragraphs 6, 7, 8 and 9.
- 3.2 The Authority will make one Covid Monthly Payment to the Contractor for each Month of a CV04 Period, subject to paragraphs 3.3 and 11.
- 3.3 Paragraph 3.2 does not apply in the First CV04 Period. In the First CV04 Period, the only payments the Authority shall make to the Contractor are any outstanding CV03 Interim Payments under CV03.
- 3.4 Even though the Authority shall not make any Covid Monthly Payments to the Contractor during the First CV04 Period, the Authority shall still calculate a Bridging Amount for the First CV04 Period in accordance with paragraph 3.1.

4 COVID DATA RETURNS

- 4.1 Following a request by the Authority, the Contractor must submit a Covid Data Return to the Authority using the Covid Data Return Template and in accordance with the Authority's instructions.
- 4.2 The Authority will send the Covid Data Return Template and any related instructions to the Contractor when it makes its request.
- 4.3 There is no limit on the number of requests that the Authority can make under paragraph 4.1.
- 4.4 The Contractor must submit the Covid Data Return to the Authority within 10 Working Days of the date of the Authority's request.

- 4.5 The Authority shall provide a set of dates to the Contractor which indicate when the Authority will make its requests for Covid Data Returns (the “**Covid Data Return Timetable**”).
- 4.6 The Contractor must submit a Covid Data Return in accordance with the requirements of this paragraph 4 even if the Authority’s request was made on a date other than a date set out in the Covid Data Return Timetable.
- 4.7 The Authority can amend the Covid Data Return Timetable. If the Authority amends the Covid Data Return Timetable it shall provide the revised Covid Data Return Timetable to the Contractor.
- 4.8 A senior finance official authorised by the Contractor must certify the accuracy and content of the Covid Data Return before the Contractor submits it to the Authority.
- 4.9 The Contractor shall only include costs in the Covid Data Return where:
- (a) it has carried out sufficient checks to ensure that such costs have been or will be incurred by the Contractor during the Covid Relief Period and meet all of the relevant qualifying criteria and requirements for Allowed Costs, and
 - (b) the Contractor holds sufficient and reliable evidence of such criteria and requirements for Allowed Costs being met, which shall include but not be limited to the information set out at Annex 2.
- 4.10 The Authority may request, and the Contractor must provide, any clarification in respect of any matter arising from the Covid Data Return submitted by the Contractor.
- 4.11 Where the Authority requests a clarification in accordance with paragraph 4.10, the Contractor must provide that clarification to the Authority:
- (a) within 3 Working Days of receipt of the Authority’s request, or

(b) by such other time as required by the Authority, as set out in the request.

4.12 Further to paragraphs 4.8, 4.9, 4.10 and 4.11, the Authority has the right to verify the information contained in a Covid Data Return. The Authority can reasonably decide what steps it takes, or process it follows, in verifying that information.

4.13 If the Contractor does not comply with paragraphs 4.1, 4.4, 4.6, 4.8, 4.9, 4.10 or 4.11, then the Authority can exercise reasonable discretion:

(a) in calculating the Bridging Amount for a CV04 Period, and

(b) in its decision on what, if any, Covid Monthly Payments it will make to the Contractor for a Subsequent CV04 Period, and the amounts of those Covid Monthly Payments.

5 CV04 PERIODS

5.1 The Authority will determine the CV04 Periods to use for the calculation of the Bridging Amount and Covid Monthly Payments, subject to this paragraph 5.

5.2 The First CV04 Period is the CV04 Period from 1 April 2020 to 30 June 2020.

5.3 The Authority will notify the Contractor of the Month or Months covered by a Subsequent CV04 Period, prior to the beginning of that Subsequent CV04 Period.

5.4 In the absence of any notification under paragraph 5.3, a Subsequent CV04 Period will cover three Months starting immediately after the previous CV04 Period.

6 CALCULATION OF THE BRIDGING AMOUNT

6.1 The Authority can take account of any Covid Data Returns that have been submitted by the Contractor when it calculates the Bridging Amount for a CV04 Period.

- 6.2 The Authority will exercise reasonable discretion in deciding which Covid Data Returns are relevant for the purpose of calculating the Bridging Amount.
- 6.3 By using the relevant Covid Data Returns referred to in paragraph 6.2, the Authority shall reasonably determine which costs for a CV04 Period are:
- (a) Allowed Costs,
 - (b) Disallowed Costs, and
 - (c) Variance Costs.
- 6.4 The Bridging Amount shall be the Allowed Costs that the Authority reasonably determines the Contractor has incurred, or will incur, in the CV04 Period, subject to paragraphs 6.5, 6.6 and 6.7.
- 6.5 Where paragraph 8 applies, the Authority may further Adjust the Bridging Amount in accordance with the provisions in that paragraph.
- 6.6 Where the Authority has made an overpayment to the Contractor the Authority may reduce the Bridging Amount by the value of that overpayment.
- 6.7 Notwithstanding paragraph 2(h) of Annex 1, the Authority, in its reasonable discretion, may choose to add an additional sum to the Bridging Amount. The Authority will consider, from 1 November 2020, whether to exercise this right.
- 6.8 Disallowed Costs and Variance Costs shall not form part of the Bridging Amount.
- 6.9 Where a cost:
- (a) is an Allowed Cost in paragraph 1 of Annex 1, and

(b) is a Disallowed Cost in paragraph 2 of Annex 1,

it shall be treated as a Disallowed Cost instead of an Allowed Cost.

6.10 Where a cost:

(a) is an Allowed Cost in paragraph 1 of Annex 1, and

(b) has been designated by the Authority as a Variance Cost in accordance with paragraph 9.1(b),

it shall be treated as a Variance Cost instead of an Allowed Cost.

7 NOTIFICATION OF COVID MONTHLY PAYMENTS AND RECALCULATION OF BRIDGING AMOUNT

7.1 Once the Authority has calculated the Bridging Amount for a Subsequent CV04 Period it shall notify the Contractor what the Covid Monthly Payments are for that Subsequent CV04 Period.

7.2 The Authority can recalculate the Bridging Amount for a CV04 Period even if it has previously calculated the Bridging Amount for that CV04 Period. The Authority is not limited in the number of recalculations it can carry out.

7.3 If the Authority has recalculated the Bridging Amount for a CV04 Period:

(a) that recalculated Bridging Amount becomes the Bridging Amount for that CV04 Period, and

(b) that recalculated Bridging Amount can be used by the Authority for the purpose of paragraph 8.1(b).

7.4 Where the Authority has recalculated the Bridging Amount for a Subsequent CV04 Period,

that recalculation shall not affect any Covid Monthly Payments that the Authority has made or will make in respect of that Subsequent CV04 Period, subject to paragraph 7.5.

7.5 Where:

- (a) the Authority has recalculated the Bridging Amount for a Subsequent CV04 Period, and
- (b) the Authority has not yet made a Covid Monthly Payment in that Subsequent CV04 Period,

then the Authority may choose to amend the Covid Monthly Payments it will make in that Subsequent CV04 Period.

7.6 Where paragraph 7.5 applies, the Authority shall notify the Contractor what the amended Covid Monthly Payments will be for that Subsequent CV04 Period.

7.7 Other than in paragraph 7.1, any reference in this Schedule to the calculation of the Bridging Amount shall extend to any recalculation of the Bridging Amount.

8 ADJUSTMENT OF BRIDGING AMOUNT FOR SUBSEQUENT CV04 PERIODS

8.1 Further to paragraph 6, the Authority can Adjust the Bridging Amount for a Subsequent CV04 Period if:

- (a) the Bridging Amount for the First CV04 Period is higher or lower than the total sum of CV03 Interim Payments that the Authority has made or will make to the Contractor over the First CV04 Period, or
- (b) the Authority recalculates the Bridging Amount for a previous CV04 Period, and that recalculated Bridging Amount is higher or lower than the Bridging Amount previously calculated by the Authority for that CV04 Period.

- 8.2 In Adjusting the Bridging Amount for a Subsequent CV04 Period, the Authority:
- (a) can apply both paragraphs 8.1(a) and 8.1(b), and
 - (b) where the Authority has recalculated the Bridging Amount in respect of two or more previous CV04 Periods, can separately apply paragraph 8.1(b) in respect of each of those previous CV04 Periods.
- 8.3 For the purposes of this paragraph 8, the Authority will not include the figure referred to in Table 2 Note 2 of Schedule 1 to CV03 in the value of any CV03 Interim Payment used in any Adjustment.
- 8.4 In paragraph 8.1(a):
- (a) where the Bridging Amount for the First CV04 Period is higher than the total sum of CV03 Interim Payments that the Authority has made or will make to the Contractor over the First CV04 Period, then
 - (b) if the Authority Adjusts the Bridging Amount for a Subsequent CV04 Period to account for this, the Authority must increase that Bridging Amount by the difference between:
 - (i) the Bridging Amount for the First CV04 Period, and
 - (ii) the total sum of CV03 Interim Payments that the Authority has made or will make to the Contractor over the First CV04 Period.
- 8.5 In paragraph 8.1(a):
- (a) where the Bridging Amount for the First CV04 Period is lower than the total sum of CV03 Interim Payments that the Authority has made or will make to the Contractor over the First CV04 Period, then

(b) if the Authority Adjusts the Bridging Amount for a Subsequent CV04 Period to account for this, the Authority must decrease that Bridging Amount by the difference between:

(i) the total sum of CV03 Interim Payments that that the Authority has made or will make to the Contractor over the First CV04 Period, and

(ii) the Bridging Amount for the First CV04 Period.

8.6 In paragraph 8.1(b):

(a) where the recalculated Bridging Amount for the previous CV04 Period is higher than the Authority's previous calculation of that Bridging Amount, then

(b) if the Authority Adjusts the Bridging Amount for a Subsequent CV04 Period to account for this, the Authority must increase the Bridging Amount for the Subsequent CV04 Period by the difference between:

(i) the recalculated Bridging Amount for the previous CV04 Period, and

(ii) the Authority's previous calculation of the Bridging Amount for the previous CV04 Period.

8.7 In paragraph 8.1(b):

(a) where the recalculated Bridging Amount for the previous CV04 Period is lower than the Authority's previous calculation of that Bridging Amount, then

(b) if the Authority Adjusts the Bridging Amount for a Subsequent CV04 Period to account for this, the Authority must decrease the Bridging Amount for the Subsequent CV04 Period by the difference between:

- (i) the Authority's previous calculation of the Bridging Amount for the previous CV04 Period, and
- (ii) the recalculated Bridging Amount for the previous CV04 Period.

9 VARIANCE COSTS

- 9.1 If the costs that the Contractor includes in a Covid Data Return are higher than the costs set out in the Baseline by 10% or more, then:
- (a) the Contractor must provide the Authority with an explanation for that variance, and
 - (b) the Authority can, in its reasonable discretion, designate some or all of the costs that exceed the amount set out in the Baseline as Variance Costs.
- 9.2 If the costs that the Contractor includes in a Covid Data Return are lower than the costs set out in the Baseline by 10% or more, then the Contractor must provide the Authority with an explanation for that variance.
- 9.3 The Authority, in its reasonable discretion, determines the set of costs that are used as the Baseline.
- 9.4 Subject to paragraph 9.5, the Authority can (but is not obliged to) take account of the following for the purpose of establishing the Baseline:
- (a) any Covid Data Returns that have been submitted by the Contractor, and
 - (b) the Contractor's Tender for the Contract.
- 9.5 The Authority, in its reasonable discretion, decides what information is relevant for the purpose of establishing the Baseline.

- 9.6 If the Authority uses information provided by the Contractor when establishing the Baseline, then:
- (a) that does not mean the Authority accepts that the information provided by the Contractor is accurate, and
 - (b) the use of the information provided by the Contractor is without prejudice to any right that the Authority has, under the Contract or otherwise, to verify that information.
- 9.7 The Authority must notify the Contractor of the Baseline after the Authority has established it.
- 9.8 After the Baseline has been established, any changes to the Baseline must be agreed by the Authority and the Contractor in accordance with the Change Control Procedure.
- 9.9 This paragraph 9 does not prejudice any other right that the Authority has under the Contract or otherwise. This includes, but is not limited to, rights:
- (a) to verify information contained in Covid Data Returns,
 - (b) to request any clarification in respect of any matter arising from Covid Data Returns,
 - (c) to calculate the Bridging Amount and Covid Monthly Payments, and
 - (d) to validate Cost Claims.
- 10 COVID MONTHLY PAYMENTS**
- 10.1 The Contractor agrees and acknowledges that payment of a Covid Monthly Payment by the Authority does not constitute confirmation by the Authority that it is a valid calculation of the Allowed Costs for the relevant Month and is without prejudice to any of the Authority's rights under this Contract or otherwise to check, validate or otherwise verify the validity of

such Covid Monthly Payment.

10.2 Without prejudice to anything else in this paragraph 10, the Authority shall have no obligation to make any Covid Monthly Payments to the Contractor where costs are incurred after the end of the Covid Relief Period.

10.3 The Authority will make Covid Monthly Payments to the Contractor in accordance with paragraph 3.2. The Covid Monthly Payment will be calculated by dividing the Bridging Amount by the number of Months in the Subsequent CV04 Period. The Authority may reasonably require the Contractor to provide any appropriate supporting information it considers necessary before making payment.

10.4 The Contractor shall notify details of the Contractor's bank account and address to the Authority via the Authority ICT System. The Authority shall send notifications of Fees paid to that address.

10.5 At any time and/or times (including, for the avoidance of doubt, at any time and/or times before and/or after payment has been made by the Authority to the Contractor) the Authority shall be reasonably entitled to seek to establish that any Covid Monthly Payment does not exceed the Allowed Costs for the relevant Month. At all times the Contractor shall provide all necessary assistance as requested by the Authority to enable the Authority to establish that any Covid Monthly Payment does not exceed the Allowed Costs for the relevant Month.

11 VALIDATION

Pre-payment validation

11.1 Before payment of any Covid Monthly Payment by the Authority to the Contractor, in respect of each Covid Monthly Payment, the Authority may undertake a check(s) to verify the validity of each Cost Claim. For the avoidance of doubt, where the Authority has undertaken any check(s) pursuant to this paragraph 11.1 it reserves the right to include

such Cost Claim in the relevant Cost Claim Sample for the Cost Claim Validation Period in which it falls.

11.2 The Authority shall be entitled to reject any Cost Claims made by the Contractor which fail any check(s) undertaken by the Authority pursuant to paragraph 11.1 without undertaking any further check(s).

Post-payment validation

11.3 At any time during the Contract Period, for any Cost Claim Validation Period the Authority may carry out a check(s) of all, or a sample, of the Cost Claims which have been made within a Cost Line (i) under this Contract only; or (ii) under all CV04 Contracts, (as the case may be) during such Cost Claim Validation Period (each such sample hereinafter being referred to as follows: a “**Cost Claim Sample**”).

11.4 For each Cost Claim Sample:

- (a) the Authority will determine the Cost Line and the range of Cost Claims from which the Authority will draw the sample,
- (b) the Authority will determine whether the sample is drawn from this Contract only or from all CV04 Contracts,
- (c) the Authority will determine the sample size,
- (d) the Authority will determine the Cost Claim Validation Period and may, for the avoidance of doubt, include any period of time:
 - (i) during which the Authority carried out any check(s) in respect of Cost Claims pursuant to paragraph 11.1, or
 - (ii) which formed part of a Cost Claim Validation Period for any other Cost Claim

Sample.

- (e) the Authority may draw a number of random samples from the relevant population of Cost Claims within a Cost Line across the relevant Cost Claim Validation Period which random samples shall together constitute a Cost Claim Sample,
- (f) the sample size may vary between Cost Claim Samples depending on:
 - (i) *the numbers and/or value of Cost Claims within a Cost Line, and/or*
 - (ii) *the value of the Cost Line*
 - (iii) *from which the sample is drawn during the Cost Claim Validation Period,*
- (g) the sample size may vary between Cost Claim Samples depending on whether the Cost Claims within a Cost Line from which the sample is drawn during the Cost Claim Validation Period are drawn from this Contract only or from all CV04 Contracts,
- (h) the sample may include Cost Claims within a Cost Line in respect of which the Authority undertook a check(s) pursuant to paragraph 11.1, in which case the Authority may rely upon any evidence relating to that Cost Claim with that Cost Line generated through such checks in order to verify the validity of such Cost Claim pursuant to paragraph 11.3 without carrying out any additional check(s) in respect of that Cost Claim within that Cost Line, and
- (i) the sample may include Cost Claims within a Cost Line which were included in any other Cost Claim Sample pursuant to paragraph 11.3, in which case the Authority may rely upon any evidence relating to that Cost Claim within a Cost Line generated through such checks in order to verify the validity of such Cost Claim within a Cost Line pursuant to paragraph 11.3 without carrying out any additional check(s) in

respect of that Cost Claim within that Cost Line.

11.5 In respect of each Cost Claim Sample, where any error or over claim has been identified by the Authority (in its reasonable opinion) in a Cost Claim Sample, the Authority shall be entitled to:

- (a) recover in part or in full (as the Authority in its reasonable discretion deems appropriate) from the Contractor the amount or value of all Cost Claim Fails,
- (b) determine (in its reasonable discretion) the Cost Claim Error Rate,
- (c) extrapolate the Cost Claim Error Rate across all of the Cost Claims in respect of which payment has been made by the Authority to the Contractor (in respect of any CV04 Contract) in that Cost Claim Validation Period to produce an aggregate value of monies overpaid (the “**Cost Claim Aggregate Error Amount**”), and
- (d) recover in part or in full (as the Authority in its reasonable discretion deems appropriate) from the Contractor a sum or sums equal to the Cost Claim Aggregate Error Amount less the sum of any monies recovered by the Authority pursuant to paragraph 11.5(a).

11.6 The Contractor shall not be entitled to recover the Cost Claim Aggregate Error Amount from any Sub-contractor other than the Sub-contractor who made the Cost Claim which is reasonably determined by the Authority to be a Cost Claim Fail.

11.7 The Contractor shall not include, in any Sub-contract, a right to recover the Cost Claim Aggregate Error Amount from any Sub-contractor other than the Sub-contractor who made the Cost Claim which is reasonably determined by the Authority to be a Cost Claim Fail.

General

11.8 In checking either a Cost Claim pursuant to paragraph 11.1 or a Cost Claim Sample

pursuant to paragraph 11.3, the Authority may (but shall not be obliged to):

- (a) carry out checks of the Covid Data Return and any data pertaining to the necessary costs incurred by the Contractor for the purpose of delivering the Services against the Open Book Data or any other data available to the Authority,
- (b) carry out checks of the Covid Data Return and any data pertaining to the necessary costs incurred by the Contractor for the purpose of delivering the Services against the Authority's data,
- (c) contact Staff, and
- (d) carry out checks of the Covid Data Return and any data pertaining to the necessary costs incurred by the Contractor for the purpose of delivering the Services against data from such other sources as the Authority may reasonably determine from time to time.

11.9 At any time during the Contract Period:

- (a) the Authority may carry out checks in accordance with paragraph 11.3 of any and/or all of the Cost Claims made during the Covid Relief Period to enable the Authority to reasonably determine whether the total of the Covid Monthly Payments paid in respect of the Covid Relief Period is equal to the total of the Allowed Costs, as determined by the Authority in its reasonable discretion, for the Covid Relief Period, and
- (b) the Cost Escalation Board, as described in paragraph 3 of Annex 4, may review any and/or all of the Covid Monthly Payments made during the Covid Relief Period.

11.10 Where the Authority reasonably determines under paragraph 11.9(a) that the total of the Covid Monthly Payments paid in respect of the Covid Relief Period exceeds the Allowed Costs for the Covid Relief Period, such excess shall be a sum of money recoverable by the

Authority from the Contractor.

11.11 Where the Authority reasonably determines under paragraph 11.9(a) that the total of the Covid Monthly Payments paid in respect of the Covid Relief Period is less than the Allowed Costs for the Covid Relief Period, such shortfall shall be a sum of money recoverable by the Contractor from the Authority.

11.12 For the avoidance of doubt, the Authority's rights in this paragraph 11 shall be without prejudice to any other rights or remedies that the Authority has under the Contract (including for the avoidance of doubt any rights of set-off).

12 RECOVERY OF CV03 INTERIM PAYMENTS

12.1 The Authority shall have a right to recover from the Contractor the proportion of each CV03 Interim Payment referred to Table 2 Note 2 of Schedule 1 to CV03.

12.2 The Authority shall exercise its right under paragraph 12.1 before 31 December 2020, or such other date as the Authority may notify to the Contractor.

12.3 The Authority's right under paragraph 12.1 is not affected by paragraph 12.2.

13 ADDITIONAL COSTS

13.1 Subject to the provisions of this Contract, the Fees are fixed and unless otherwise agreed between the Parties in accordance with the Change Control Procedure any additional or unforeseen costs incurred by the Contractor in delivering the Services shall be borne solely by the Contractor.

14 SUPPLY CHAIN PROTECTION (FEES AND PAYMENT)

14.1 The Contractor shall ensure that each Sub-contract shall include provisions that in substance are at least equivalent to the provisions in this Schedule.

15 SET OFF

15.1 Where any sum is or becomes payable by the Contractor to the Authority under the Contract or pursuant to this CV04, the Authority may unilaterally deduct that sum from any amount then due, or which at any later time may become due, to the Contractor under the Contract, this CV04, or any other agreement or contract that the Contractor has with the Authority or the Crown.

ANNEX 1: ALLOWED COSTS AND DISALLOWED COSTS

1. The following costs are Allowed Costs:

- a) the necessary costs that the Contractor incurs in delivering the Services,
- b) depreciation on capital costs where charged in accordance with the Contractor's normal depreciation and amortisation policy and process attributable to Authority contracts that the Contractor holds,
- c) provided that the Contractor has the prior written agreement of the Authority to the costs being incurred, the Contractor's costs relating to enhancements of existing services or new/additional services provided by the Contractor during the Covid Relief Period,
- d) operating expenditure relating to the provision of the Services, including:
 - i. the unit costs and quantity of consumables and bought-in services,
 - ii. manpower resources, including pay rises or increased remuneration packages only where those pay rises or increased remuneration packages arise from changes in statutory rates of pay or approved in advance of the Covid Relief Period and documented by the Contractor's remuneration committee and communicated to employees, and
 - iii. reimbursable expenses,

- e) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services,
- f) amounts paid to each Sub-contractor used to deliver the Services,
- g) overheads, corporate costs, recharges or other such apportioned costs, which do not exceed the costs as included in the original tender,
- h) costs associated with changes to support services (including back office services) and functions where those changes result in clear savings to the overall costs incurred by the Contractor in supplying the Services, and such savings are passed to the Authority in whole or in part based on the percentage of such costs being funded through CV04,
- i) fit-out costs where those costs have been incurred by the Contractor with the prior written agreement of the Authority,
- j) TUPE costs where those costs have been incurred by the Contractor with the prior written agreement of the Authority, and
- k) legal fees where those fees specifically relate to the delivery and operation of the Contract.

2. The following costs are Disallowed Costs:

- a) any costs that are in excess of the costs set out by the Contractor in its tender for the Contract,
- b) any costs that have not been properly mitigated by the Contractor, as reasonably determined by the Authority,
- c) any costs that have been paid, or will be paid, through any other government, public sector, and/or other Covid-19 related relief, grant, intervention, insurance payment, or other measure which results in the Contractor receiving more than one benefit or relief to cover the same underlying cost,

- d) actual capital expenditure and capital replacement costs,
- e) capital sums paid relating to loans and mortgages,
- f) the unit cost and total actual costs of all hardware and software,
- g) risk premiums for potential future risks,
- h) profit, surplus or margin,
- i) a cost associated with or arising from any planned restructuring of the Services under the Contract prior to the Covid Relief Period,
- j) corporate advice and associated costs,
- k) costs relating to statutory audit, and
- l) costs not associated with the Contract.

3. Paragraph 2(h) of this Annex 1 is without prejudice to paragraph 6.7.

ANNEX 2: REQUESTS FOR INFORMATION

When the Authority validates any Cost Claim, the Authority (without prejudice to any other right it may have, including rights to request information) may request and the Contractor shall provide Open Book Data, which shall include but not be limited to the following sorts of information:

Cost Lines	Information
Direct Staff Costs	<ul style="list-style-type: none"> • Organisation chart and human resource validation (human resource records, contract of employment, valid national insurance number, non-UK national proof of employment rights) • Payroll records including pension costs and national insurance
Management Staff Costs	

	<ul style="list-style-type: none"> • Timesheets • P60 / P45 • Expense claim forms • Comparative payslips for pre and post Covid Relief Period • Remuneration Committee reports and employee notification for any pay-increases
Staff Related Expenses	<ul style="list-style-type: none"> • Expense claim forms • Unit rates and amounts as included in original tenders • Contractor expenses policy (pre and post Covid Relief Period if amended following the commencement of the Covid Relief Period) • Rates payable should not exceed HMRC guidance and allowable expenses • P11D, or equivalent, where available
Staff Training	<ul style="list-style-type: none"> • Invoices and claims • Personal Development Plans
Staff Recruitment	<ul style="list-style-type: none"> • Recruitment plan approved by the Contractor's Board • Organisation charts • Business case setting out clear rationale • Advertisement, application forms, interview notes, award and notification letters, contracts of employment
Other Staff Costs	<ul style="list-style-type: none"> • Invoices and charge sheets

Rent/Lease/Mortgage Payments	<ul style="list-style-type: none"> • Authorised premises schedule as contained in the contract • Lease, rental agreements, occupancy rights, licences • Invoices and charge sheets • Cost per M or FTE as contained in the original tender compared to cost per M or FTE contained in the Covid Data Return
Fit-Out Costs	<ul style="list-style-type: none"> • Invoices and charge sheets • Charges identifiable and in relation to compliance with requirements of Government policy and guidance to meet Covid social distancing standards as agreed by the Authority
Rates	<ul style="list-style-type: none"> • Authorised premises schedule as contained in the contract • Lease, rental agreements, occupancy rights, licences • Invoices and charge sheets • Cost per M or FTE as contained in the original tender compared to cost per M or FTE contained in the Covid Data Return
Facilities Management Costs	<ul style="list-style-type: none"> • Invoices and charge sheets
Premises Security Costs	<ul style="list-style-type: none"> • Invoices and charge sheets
Other Accommodation Costs	<ul style="list-style-type: none"> • Invoices and charge sheets
IT Hardware	<ul style="list-style-type: none"> • Invoices and charge sheets
IT Software	
IT Maintenance	

IT Security Costs	<ul style="list-style-type: none"> • Security plans and accreditation • That 'IT Security Costs' have not been also included in 'Premises Security Costs' • Contractor asset capitalisation policy • Service delivery model showing integration of the software into the supply of the Services
Other IS IT Costs	
Telephony & Communications	<ul style="list-style-type: none"> • Invoices and charge sheets • Internal telephone directory • Key marketing and other official public letters, documents, websites etc. clearly showing utilisation of phone numbers
Participant Travel Costs	<ul style="list-style-type: none"> • Invoices and charge sheets • Schedule of costs and charges per Participant and other information contained on the Contractor's systems • Details of journeys undertaken by Participants • Schedule of training by Participants, Participant Action Plans • For In-Work Support costs – schedule of costs by Participant. Employer details and records.
Participant Training Costs	
Participant In work Support Costs	
Participant Childcare/caring responsibilities	
Other Participant Costs	
Sub-contractor costs	<ul style="list-style-type: none"> • Invoices and charge sheets • Sub-contractor cost validation systems and processes • Sub-contractor cost validation samples, results, outcomes, reports, errors, redress, remedies invoked • Sub-contractor certified cost returns

	<ul style="list-style-type: none"> • Contractor's due diligence on Sub-contractor costs
Printing and Stationery	<ul style="list-style-type: none"> • Invoices and charge sheets • Copies of example products
Office Equipment	<ul style="list-style-type: none"> • Invoices and charge sheets • Where costs relate to sites / premises, such premises are included within agreed premises as 'Rent/Lease/Mortgage Payments' • Contractor asset capitalisation policy
Postage & Courier	<ul style="list-style-type: none"> • Invoices and charge sheets • Contracts
Marketing Costs	<ul style="list-style-type: none"> • Invoices and charge sheets • Contracts • Copies of marketing material
Storage Costs	<ul style="list-style-type: none"> • Invoices and charge sheets • Contracts • Document storage and retention policy
TUPE Costs	
Other Operating Costs	<ul style="list-style-type: none"> • Invoices and charge sheets • Contracts • Contractor asset capitalisation policy

Legal Fees	<ul style="list-style-type: none"> • Invoices and charge sheets
Auditing Fees	<ul style="list-style-type: none"> • Invoices and charge sheets
Interpretation Services	<ul style="list-style-type: none"> • Invoices and charges • Contracts • Corporate recharge policy and procedure • Reconciliation of recharges at corporate level, and where appropriate at group level setting out charges by Commissioner and for the Authority charges by Contract
Other Professional/Consultancy Services	
HR Support	
Finance Support	
Financing Costs	
Other Corporate Overheads	
Other Costs	

ANNEX 3: COVID DATA RETURN TEMPLATE



Event OBCM Cost
Sheet Template Final.

ANNEX 4: COST ESCALATION PROCESS

1 COST ESCALATION NOTICES

1.1 If a Cost Escalation Dispute arises then:

- (a) the Authority and the Contractor shall attempt in good faith to resolve the Cost Escalation Dispute, and
- (b) if such attempts are not successful within a reasonable period, not being longer than

twenty (20) Working Days, either Party may issue a Cost Escalation Notice to the other Party.

1.2 A Cost Escalation Notice shall set out:

- (a) the material particulars of the Cost Escalation Dispute, and
- (b) the reasons why the Party serving the Cost Escalation Notice believes that the Cost Escalation Dispute has arisen.

1.3 Following the issue of a Cost Escalation Notice, the Parties shall, after the Covid Relief Period has ended, or at another time as agreed by the Parties, seek to resolve the Cost Escalation Dispute:

- (a) first by commercial negotiation, and
- (b) lastly by recourse to a body of individuals who shall determine the position ("Cost Escalation Board").

1.4 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Cost Escalation Dispute and notwithstanding any issue of a Cost Escalation Notice.

2 COMMERCIAL NEGOTIATION

2.1 Following the service of a Cost Escalation Notice, the Authority and the Contractor shall, after the Covid Relief Period has ended, or at another time as agreed by the Parties, make reasonable endeavours to resolve the Cost Escalation Dispute by commercial negotiation between representatives of both Parties.

2.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Cost Escalation

Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution, or

(b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this paragraph 2,

(c) either Party may serve a written notice to refer the Cost Escalation Dispute to the Cost Escalation Board.

3 COST ESCALATION BOARD

3.1 After the Covid Relief Period has ended, or at another time as agreed by the Parties, a Cost Escalation Board shall be established by the Authority.

3.2 The purpose of the Cost Escalation Board is to consider and resolve any Cost Escalation Disputes that are referred to it.

3.3 The decisions of the Cost Escalation Board shall be full, final and binding on the Parties totally (in the absence of a material failure to comply with this paragraph 3). The decision of the Cost Escalation Board shall not be subject to appeal (in the absence of a material failure to comply with this paragraph 3).

3.4 The Cost Escalation Board shall be chaired by an individual appointed by the Authority ("Chairperson").

3.5 The maximum number of individuals making up the Cost Escalation Board can vary but will be determined by the Authority.

3.6 Including the Chairperson, the Cost Escalation Board will comprise of an equal number of individuals. 50% of the Cost Escalation Board will represent the Authority and will be appointed by the Authority. The remaining 50% will represent the Contractor. The Chairperson will be appointed by the Authority. Therefore, the Cost Escalation Board will

comprise of an even number of individuals, with the Chairperson, in the event that any votes are tied, having an additional vote which will be regarded as the casting vote. All members of the Cost Escalation Board, including the Chairperson, will be expected at all times to act transparently and reasonably.

- 3.7 A Cost Escalation Board meeting shall be quorate as long as there is present at least the Chairperson and one representative of the Contractor, whether this be an individual from the Contractor or an industry representative (see below for further detail). Therefore, irrespective of the fact that all the Cost Escalation Board members may not be present at the Cost Escalation Board meeting, provided the quorum requirements detailed above are met, the decisions reached in the meeting will be valid and binding on the Parties.
- 3.8 At least ten Working Days ahead of a Cost Escalation Board meeting taking place, the Authority shall give notice to the Contractor. The notice shall notify the Contractor as to the number of individuals that will represent the Contractor on the Cost Escalation Board, as well as the date, time and location of the Cost Escalation Board meeting.
- 3.9 At least five Working Days ahead of a Cost Escalation Board meeting taking place, the Contractor shall notify the Authority the name(s) of the individuals that it wishes to represent it on the Cost Escalation Board.
- 3.10 With the exception of any one member, the Authority has the right to reject the individuals proposed by the Contractor and appoint industry representatives in their place.
- 3.11 Of the members of the Cost Escalation Board that represents the Contractor, a minimum of one individual must be nominated by the Contractor. The remainder can be comprised of industry representatives and can be appointed by the Authority. The decision of whether to appoint industry representatives and the number of industry representatives to be appointed to represent the Contractor is a matter to be reasonably determined by the Authority, without the need for any input from the Contractor.
- 3.12 At least two Working Days ahead of a Cost Escalation Board meeting, the Chairperson shall notify the Contractor and all members of the Cost Escalation Board of the identity of

all individuals making up the Cost Escalation Board.

3.13 All Parties shall have the right to submit evidence to substantiate their position and claim.

3.14 Details relating to the Cost Escalation Board

Start date for Cost Escalation Board meetings	On a date/dates following the end of the Covid Relief Period, or as otherwise agreed by the Parties, if any Cost Escalation Disputes are referred to the Cost Escalation Board.
Frequency of Cost Escalation Board meetings	The Chairperson of the Cost Escalation Board shall schedule Cost Escalation Board meetings, taking account of any Cost Escalation Disputes that are referred to the Cost Escalation Board.
Location of Cost Escalation Board meetings	The Chairperson of the Cost Escalation Board shall determine the location of Cost Escalation Board meetings.

3.15 The Chairperson shall be responsible for:

- (a) scheduling Cost Escalation Board meetings,
- (b) setting the agenda for Cost Escalation Board meetings and circulating to all attendees in advance of such meetings,
- (c) chairing the Cost Escalation Board meetings,
- (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Cost Escalation Board meetings,
- (e) conducting the Cost Escalation Board meetings in a fair and transparent manner,

	<ul style="list-style-type: none"> (f) ensuring that minutes of Cost Escalation Board meetings are recorded and disseminated electronically to the appropriate persons and to all Cost Escalation Board meeting participants within seven (7) Working Days after the Cost Escalation Board meeting, (g) maintaining robust audit trails of decisions made, (h) facilitating the process or procedure by which any decision agreed at any Cost Escalation Board meeting is given effect in an appropriate manner, and (i) avoiding all unconscious bias and unfair treatment. <p>3.16 Each member of the Cost Escalation Board shall have one vote in Cost Escalation Board meetings. If for whatever reason the votes are tied, the Chairperson will have an additional vote which will be regarded as the casting vote.</p> <p>3.17 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing of the proposed change for agreement by the other party (such agreement not to be unreasonably withheld or delayed).</p> <p>3.18 In the event that the Contractor wishes to complain about the appointment of a Cost Escalation Board member, the Contractor shall submit to the Chairperson the basis of the complaint. The Chairperson shall consider the grounds of the complaint and acting reasonably, change the Cost Escalation Board member. Grounds for the complaint must be based on fact and relate to fair and equitable treatment or professional standing or expertise.</p> <p>3.19 Each Party shall ensure that its representatives on the Cost Escalation Board make all reasonable efforts to attend Cost Escalation Board meetings. If any board member is not able to attend the Cost Escalation Board meeting, that person shall use all reasonable endeavours to ensure that:</p> <ul style="list-style-type: none"> (a) a delegate attends the relevant Cost Escalation Board meeting in his/her place
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	<p>(wherever possible) and is properly briefed and prepared, and</p> <p>(b) that the Cost Escalation Board member is debriefed by such delegate after the Cost Escalation Board meeting.</p> <p>3.20 The Parties shall ensure, as far as reasonably practicable, that the Cost Escalation Board shall as soon as reasonably practicable, resolve the issues and achieve the objectives place before it. Each Party shall endeavour to ensure that board members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.</p>
RPC, A1.1	<p><i>In RPC, replace the existing definitions of Fees and Open Book Data with the definitions of Fees and Open Book Data as below.</i></p> <p>“Fees” means the amounts (exclusive of any applicable VAT) as set out in Schedule 4 (Fees and Payment), payable by the Authority under the Contract, to which the Contractor is entitled during the Covid Relief Period for the full and proper performance by the Contractor of its obligations under the Contract.</p> <p>“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Fees already paid or payable and the Fees forecast to be paid during the remainder of the Contract Period and the Contractor's performance under this Contract, including, but not limited to, details and all assumptions relating to:</p> <p>(a) the Contractor’s costs broken down against each service category and/or deliverable under the Contract, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs</p>

	<p>of all hardware and software; and</p> <p>(b) operating expenditure relating to the supply of the Services including an analysis showing:</p> <p>(i) the unit costs and quantity consumables and bought-in services;</p> <p>(ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;</p> <p>(iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor's profit margin;</p> <p>(iv) reimbursable expenses (such as reasonable out of pocket travel and subsistence expenses properly and necessarily incurred in the supply of the Services);</p> <p>(v) overheads;</p> <p>(vi) all interest, expenses and any other third party financing costs incurred in relation to the supply of the Services;</p> <p>(vii) the Contractor's profit margin achieved over the Contract Period and on an annual basis;</p> <p>(viii) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor; and</p> <p>(ix) an explanation of the type and value of risk and contingencies associated with the supply of the Services, including the amount of money attributed to each risk and/or contingency; and</p>
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	(c) the Contractor's most up-to-date management accounts and annual accounts.
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Schedule 3: Contractor Code of Conduct

Contract Type, Contract Reference	Modification
RPC, Schedule A	<p data-bbox="528 344 952 373"><i>For RPC insert new Schedule A.</i></p> <p data-bbox="528 411 1249 440"><u>SCHEDULE A - CONTRACTOR CODE OF CONDUCT</u></p> <p data-bbox="528 478 1267 507">1 OVERARCHING STANDARDS OF BEHAVIOUR</p> <p data-bbox="528 536 1910 600">1.1 The overarching standards of behaviour the Authority expects of the Contractor, at any time but especially during the period of Contractor relief due to COVID-19, are:</p> <ul style="list-style-type: none"> <li data-bbox="622 628 1910 756">(a) Ethical behaviour – the Authority expects the highest standards of ethical behaviour and professionalism from Contractors when Contractors deal with the Authority, service users, and stakeholders. The Authority also expects Contractors to act within the spirit of the contract. <li data-bbox="622 785 1910 880">(b) Counter fraud and corruption – the Authority expects all Contractors to comply with anti-corruption laws, anti-money laundering laws and to have robust control systems to prevent and detect fraudulent or potentially fraudulent activity. <li data-bbox="622 909 1910 973">(c) Transparency – the Authority expects all Contractors to be transparent when dealing with the Authority, their service users, their Sub-contractors, and stakeholders. <li data-bbox="622 1002 1910 1098">(d) Treatment of Sub-contractors – the Authority expects Contractors to treat their Sub-contractors fairly when dealing with prompt payment, risk management and charging for services provided to them by the Contractor. <li data-bbox="622 1126 1910 1350">(e) Corporate Social Responsibility – the Authority expects its Contractors to be good corporate citizens by upholding the values of this Code and supporting key government corporate social responsibility policy areas, such as: diversity and inclusion, sustainability, prompt payment, small and medium sized enterprise engagement, support of the Armed Forces Covenant, apprenticeships and skills development. The Authority supports constructive and collaborative partnership working and expects Contractors to invest in the relationship between the Authority and the Contractors.

- 1.2 The Authority expects the Contractor to adhere to, and the Authority reserves the right to monitor, the following:
- 2 RELATIONSHIP MANAGEMENT / ETHICAL BEHAVIOUR**
- 2.1 Contractors must act openly, honestly and with integrity in delivering services, working with the Authority, its customers and stakeholders and when claiming payment for services. Contractors must maintain accurate systems and complete records of business transactions with appropriate and proportionate controls and control environments that maintain the integrity of the information and data and protect it from potential abuse, falsification or error.
- 2.2 Contractors must not force unfair contract terms on their Sub-contractors, nor allow unfair exploitation of a dominant market or customer position.
- 2.3 Contractors must act at all times with respect and integrity, use open and transparent accounting, and work within the spirit of the contract as well as within the contractual terms. Where there is a conflict between the spirit and contract terms Contractors must bring this to the attention of the Authority.
- 2.4 Contractors must ensure that risk is managed by the party best able to do so and be prepared to share with the Authority intelligence of Sub-contractor risks, so that end to end risks can be managed and that material commercial and operational risks, for example Sub-contractor failure, can be managed and mitigated.
- 3 TREAT EMPLOYEES AND SUB-CONTRACTORS FAIRLY**
- 3.1 Contractors and their Sub-contractors must ensure that robust procedures are adopted and maintained to ensure the protection of human rights at all times. Contractors must ensure the elimination of unethical and illegal employment practices, such as modern slavery, forced labour and child labour, and other forms of exploitative and unethical treatment of workers and service users. Contractors and their Sub-contractors are encouraged to pay employees (and seek employment opportunities for customers at or above) the National Living Wage.
- 3.2 Contractors and their Sub-contractors must have policies and processes in place for recording and eliminating the occurrence of health and safety related incidents.

	<p>3.3 The Authority requires full Sub-contractor transparency and compliance with HM Government policy initiatives including the support and capacity building of micro-organisations, small and medium sized organisations, prompt payment, and support for economic growth.</p> <p>3.4 Contractors must engage their Sub-contractors in a manner consistent with the Authority's treatment of its direct Contractors. This includes, but is not limited to, appropriate pricing, volume management, service fee flow, charging for central and corporate services, fiduciary and financial risk management, and applying transparent and appropriate contractual measures where the Sub-contractor underperforms against its contracts and the spirit of those contracts.</p> <p>3.5 The Authority will not tolerate bribery, corruption or fraud in any form and Contractors must conduct their business honestly, fairly and free from such behaviours. Contractors, and the Sub-contractor, must protect against these behaviours and report any instances or concerns to the Authority immediately. The Authority takes a zero tolerance approach to bribery, corruption and fraud, and will investigate any instance of suspected bribery, corruption or fraud.</p> <p>3.6 The Authority's employees, employees of the Authority's Contractors, and service users have the right to be treated with respect in all circumstances. The Authority will not tolerate discrimination, harassment, victimisation, bullying, intimidation or disrespect to the Authority's staff, stakeholders or service users.</p> <p>4 VALUE</p> <p>4.1 Value for Money ("VfM") and financial transparency are essential requirements to the Authority's commissioned work. All Contractors and their Sub-contractors must seek to maximise value including by improving performance and quality of services throughout the life of the contract / relationship.</p> <p>4.2 Contractors must demonstrate that they are pursuing continuous improvement throughout the contract and Sub-contracts, and apply stringent and robust financial controls, management and governance to reduce waste and improve efficiency in their internal operations and within the Sub-contracts. The Authority expects Contractors and their Sub-contractors to demonstrate openness and honesty and be realistic about their performance, in all circumstances.</p> <p>4.3 The Authority expects to obtain value for money and to be able to demonstrate long-term value for</p>
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money to the UK taxpayer. This means that contracts should be priced to offer sustainable value throughout their life, including when changes are made to the contract.

4.4 The Authority's minimum expectation is that contracts are delivered to meet targets and that Contractors will continually improve value and quality through continuous improvement, improved performance and improved quality.

4.5 The Authority does not expect Contractors to exploit an incumbent, monopoly position, Sub-contractor(s), urgent situation(s), or an imbalance of capability or information to impose opportunistic pricing.

4.6 The Authority expects Contractors to work in good faith to resolve any disputes promptly and fairly during the life of a contract through good relationship management and, where appropriate, use contractual dispute resolution mechanisms, recognising that taxpayer and Contractor interests are rarely best served by litigation.

4.7 The Authority expects Contractors to seek opportunities to improve value and social value in contracts and to share best practice with the Authority and other authorities / Contractors.

5 REPUTATION AND CONFLICT

5.1 The Authority expects Contractors and their Sub-contractors to behave ethically, comply with legal and industry requirements and seek to implement best practice.

5.2 Contractors must be honest when representing their work for the Authority, their performance of the contract and their relationship with the Authority. The Authority expects Contractors to protect the HM Government's reputation and ensure that neither they nor any of their partners or Sub-contractors bring the government into disrepute, for example by engaging in any act or omission which may diminish public trust in HM Government.

5.3 The Authority requires Contractors to mitigate against any real or perceived conflict of interest through their work with HM Government. A Contractor with a position of influence gained through a contract must not use that position to disadvantage any other Contractor or reduce the potential for future competition, for example by creating a technical solution that locks in the Contractor's own goods or services.

5.4 The Contractor and their Sub-contractors must conduct business in compliance with competition (anti-trust) laws and must not seek to co-ordinate the market with other Contractors or their Sub-contractors in a way that restricts competition.

6 COUNTER FRAUD AND CORRUPTION

6.1 Contractors must adhere to anti-corruption laws, including but not limited to the Bribery Act 2010, and money laundering regulations. Contractors must have robust processes to ensure that the Sub-contractors in their supply chain also comply with these laws.

6.2 The Authority has a zero tolerance to any form of corrupt practices including extortion and fraud, and will investigate any suspected instances. The Authority expects Contractors to be vigilant and to proactively identify fraud, and the risk of fraud, in their business. Contractors must have robust systems, controls and/or control environments to protect against the potential for fraud, including, but not limited to, prohibiting perverse employee reward systems.

6.3 Contractors and their Sub-contractors must declare to the Authority any instances or allegations of unethical behaviour by an existing or previous member of staff, or where there is a known or suspected conflict of interest. Contractors must immediately notify the Authority where fraudulent practice and/or financial irregularity is suspected or discovered and disclose any interests that might affect their decision-making or the advice that they give to HM Government.

7 FINANCIAL TRANSPARENCY OBJECTIVES

7.1 The Contractor acknowledges that the provisions of Schedule 4 (Fees and Payment) are designed to facilitate the objectives set out below. The Contractor will cooperate with the Authority so that:

- (a) the Authority can understand any information that the Contractor submits to the Authority,
- (b) both Parties have confidence that Fees are based on justifiable costs that can be independently validated, and clearly and wholly attributed to the Contract,
- (c) both Parties can understand the potential impact of any changes to the Contract on the payments that the Authority makes to the Contractor,
- (d) both Parties can review, address issues with, and re-forecast progress in relation to the

	<p>provision of the Services,</p> <ul style="list-style-type: none">(e) the Authority can demonstrate that it is achieving value for money/economic value through the Contract, and protecting capacity and capability for delivery of Services after the Relief Expiry Date,(f) all financial documents and models prepared by the Contractor shall be consistent with each other in the use of terminology, presentation, and underlying structure, including through the use of templates provided by the Authority to the Contractor, and(g) the Authority is in a position to validate any payments it makes to the Contractor. <p>8 COVID-19 GUIDANCE</p> <p>8.1 The Contractor must, in delivering the Services, adhere to any guidance issued by the government on working safely during the COVID-19 pandemic. This includes, but is not limited to, any guidance published at the following address:</p> <p>https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19</p>
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Schedule 4: Financial Distress

Contract Type, Contract Provision	Modification
RPC, Schedule 22	<p><i>For RPC remove existing Schedule 22 and insert new Schedule 22: Financial Distress.</i></p> <p><u>SCHEDULE [B/22]: FINANCIAL DISTRESS</u></p> <p>1 Definitions</p> <p>In this Schedule, the following definitions shall apply:</p> <p>“Accounting Reference Date” means the dates to which the Contractor prepares its audited financial statements;</p> <p>“FDE Group” means the Contractor, Key Sub-contractors, and the Guarantor;</p> <p>“Financial Distress Event” the occurrence of one or more of the events listed in Paragraph 3.1 or Paragraph 3.2 of this Schedule;</p> <p>“Financial Distress Remediation Plan” a plan setting out how the Contractor will ensure the continued performance and delivery of the Services in accordance with the Contract in the event that a Financial Distress Event occurs. The plan shall include the following information as a minimum:</p> <ul style="list-style-type: none"> (a) management accounts (including profit and loss, balance sheet and cash flow forecasts); (b) draft or unaudited financial accounts (including profit and loss, balance sheet and cash flow statements);

	<p>(c) evidence of parent company funding or support that is available to the Contractor;</p> <p>(d) evidence of any corporate loan facility that is available to the Contractor; and</p> <p>(e) any other information that the Authority requires the Contractor to include in the plan.</p> <p>“Financial Indicators” in respect of the Contractor, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at paragraph 5.1 of this Schedule;</p> <p>“Financial Target Thresholds” means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule;</p> <p>“Key Sub-contractor” any Sub-contractor:</p> <p>(a) which, in the opinion of the Authority, performs a critical role in the provision of all or part of the Services; and/or</p> <p>(b) with a Sub-contract with a contract value which at the time of appointment exceeds ten percent (10%) of the aggregate Fees forecast to be payable under this Contract.</p> <p>2 Warranties and Duty to Notify</p> <p>2.1 The Contractor warrants and represents to the Authority for the benefit of the Authority that as at the CV04 Variation Date the financial position or, as appropriate, the financial performance of each of the Contractor, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.</p> <p>2.2 The Contractor shall:</p> <p>(a) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial</p>
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Target Thresholds on a regular basis and no less than once a year within one-hundred and twenty (120) days after the Accounting Reference Date; and

- (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Contractor first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.3 Each report submitted by the Contractor pursuant to paragraph 2.2(a) shall:

- (a) be a single report with separate sections for each of the FDE Group entities;
- (b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
- (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- (e) include a history of the Financial Indicators reported by the Contractor in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 Financial Distress Events

3.1 The following shall be Financial Distress Events, and for the purposes of this Schedule are categorised as "Risk Level 1" Financial Distress Events:

- (a) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (c) an FDE Group entity committing a material breach of covenant to its lenders;
- (d) a Key Sub-contractor notifying the Authority that the Contractor has not satisfied any material sums

	<p>properly due under a specified invoice and not subject to a genuine dispute;</p> <p>(e) any of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities falling within Risk Level 1.</p> <p>3.2 The following shall be Financial Distress Events, and for the purposes of this Schedule are categorised as “Risk Level 2” Financial Distress Events:</p> <p>(a) any of the following:</p> <ul style="list-style-type: none"> (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than two million pounds (£2m) or obligations under a service contract with a total contract value greater than two million pounds (£2m); (ii) non-payment by an FDE Group entity of any financial indebtedness; (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default; (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; (v) an FDE Group entity can no longer use a corporate loan facility, or the corporate loan facility has been modified to the detriment of the FDE Group entity; or (vi) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity; <p>in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with the Contract; and</p> <p>(b) any of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities falling within Risk Level 2.</p> <p>4 Consequences of Financial Distress Events</p> <p>4.1 Immediately upon notification by the Contractor of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Contractor), the Contractor shall have the obligations and the Authority shall have the rights and remedies as</p>
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set out in Paragraphs 4.3 to 4.6.

4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(d), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Contractor ten (10) Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Contractor shall (and shall procure that the Guarantor and/or any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Contractor in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with the Contract; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with the Contract:
 - (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Contractor in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Contractor, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Contractor of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within five (5) Working Days

	<p>of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or escalated under Paragraph 4.5.</p> <p>4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Contractor's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan with the Contractor.</p> <p>4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Contractor shall:</p> <ul style="list-style-type: none"> (a) on a regular basis (which shall not be less than fortnightly): <ul style="list-style-type: none"> (i) review and make any updates to the Financial Distress Remediation Plan as the Contractor may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with the Contract; and (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Contractor and/or the reasons why the Contractor may have decided not to make any changes; (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan. <p>4.7 Where the Contractor reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, and the Contractor is able to demonstrate this to the satisfaction of the Authority, the Contractor shall notify the Authority and the Parties may agree that the Contractor shall be relieved of its obligations under Paragraph 4.6.</p> <p>4.8 The Contractor shall use reasonable endeavours to put in place the necessary measures to ensure that the</p>
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information specified at paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:

- (a) obtaining in advance written authority from Key Sub-contractors and/or the Guarantor authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
- (b) agreeing in advance with the Authority, Key Sub-contractors and/or the Guarantor a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
- (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
- (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 Financial Indicators

5.1 Subject to the calculation methodology set out at Annex 1 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

Financial Indicator	Calculation ¹	Financial Target Threshold:	Risk Level 1	Risk Level 2
Debt Ratio	Total Liabilities / Total Assets	Debt ratio is less than or equal to 1.0	Debt ratio is greater than 1.0 but less than or equal to 1.2	Debt ratio is greater than 1.2
Acid Test	(Current liabilities –	Acid test is greater than	Acid test is less than 0.8	Acid test is less than 0.6

	inventory) / Current liabilities	or equal to 0.8	but greater than or equal to 0.6	
Operating Cash Flow Ratio	Operating cash flow / Revenue x 100	Operating cash flow ratio is greater than or equal to 4%	Operating cash flow ratio is less than 4% but greater than or equal to 2%	Operating cash flow ratio is less than 2%

Key: ¹ – See Annex 1 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

6 Termination Rights

The Authority shall be entitled to terminate the Contract if:

- (a) the Contractor fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.2(b);
- (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- (c) the Contractor fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

Annex 1: Calculation Methodology for Financial Indicators

The Contractor shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. **Terminology:** The terms referred to in this Annex are those used by UK companies in their financial

statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).

2. **Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. **Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. **Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
Debt Ratio	<i>Debt ratio = total liabilities / total assets All elements used to calculate the debt ratio are available on the face of the Balance Sheet in a standard set of financial statements.</i>
Acid Test	<i>Acid test = (current liabilities – inventory) / current liabilities All elements used to calculate the acid test are available on the face of the Balance Sheet in a standard set of financial statements.</i>
Operating Cash Flow Ratio	<i>Operating Cash Flow Ratio = Operating Cash Flow / Revenue x 100 All elements used to calculate the operating cash flow ratio are available in the Profit and Loss account and Cash Flow statement in a standard set of financial statements.</i>

Schedule 5: Additional Management Information

Contract Type, Contract Reference	Modification
RPC, Schedule 20	<p><i>Insert the following four paragraphs at the end of Schedule 20 for RPC.</i></p> <ol style="list-style-type: none"> 1. The Contractor will provide the Authority, at three monthly intervals, with data on the Contractor’s high level order book or turnover analysis, in a format determined by the Authority from time to time, including but not limited to: <ol style="list-style-type: none"> a. commissioner and contract, b. percentage of turnover, c. contract key dates (income start and end), and d. COVID-19 action being proposed/taken. 2. The Contractor will provide the Authority, each Month or as otherwise requested by the Authority, with the following details of its Sub-contractors in a format to be determined by the Authority from time to time, including but not limited to: <ol style="list-style-type: none"> a. Sub-contractor partner name, b. Sub-contractor partner main contact (name, phone and email) with alternative for contingency, c. Service(s) delivered, d. geographic area(s) covered, e. amount paid in Month, f. where there is a variance of +/- 10% from the previous Month’s payment to any Sub-contractor, an explanation to be provided, g. the Contractor’s stability risk assessment of its Sub-contractor, and h. contingency plans.

	<ol style="list-style-type: none">3. The Contractor will provide the Authority with details of the Contractor's Sub-contractor stability risk assessment policy, process and methodology:<ol style="list-style-type: none">a. within 10 Working Days of the CV04 Variation Date,b. when updated, reviewed or amended by the Contractor, andc. annually. 4. The Contractor will provide the Authority with all other such information in respect of the Contractor and Contract as the Authority reasonably requires, from time to time, to enable the Authority to ascertain and determine:<ol style="list-style-type: none">a. the operation and effectiveness of the Contract,b. the resources deployed and/or available under the Contract, andc. the risk to the delivery of the Contract.
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Schedule 6: Not used

Schedule 7: Performance Enhancement

Contract Type, Contract Reference	Modification
RPC	<p data-bbox="539 344 875 371"><i>Add Addendum 1 to RPC</i></p> <p data-bbox="539 411 1771 438"><u>Addendum 1: Cancellation, Deferral or Suspension after a Contractor Termination Event</u></p> <p data-bbox="539 478 696 505">Definitions</p> <p data-bbox="539 545 1081 572">“Contractor Termination Event” means:</p> <ul style="list-style-type: none"> <li data-bbox="640 612 1592 639">(a) the occurrence of three (3) Defaults in any six (6) Month period; or <li data-bbox="640 679 1592 707">(b) the Contractor committing a material Default which is irremediable. <p data-bbox="539 746 1899 842">“CSS Measurement Period” means the period in respect of which the Contractor’s achievement of the Customer Service Standards shall be measured by the Authority. Such period could be any Month, three (3) Month, twelve (12) Month or other period at the reasonable discretion of the Authority.</p> <p data-bbox="539 882 1861 978">“CSS Measurement Point” means the point in time at which the Authority measures/reviews the Contractor’s achievement of the Customer Service Standards, which will be the last day of a Month or such other point in time as the Authority selects in its reasonable discretion.</p> <p data-bbox="539 1018 1816 1074">“CSS Measurement Review” means the Authority’s review of the Contractor’s achievement of the Customer Service Standards.</p> <p data-bbox="539 1114 1906 1209">“Customer Service Standards” means the service levels to which the Services are to be supplied by the Contractor and which shall include the Specification Customer Service Standards and the Tender Customer Service Standards.</p> <p data-bbox="539 1249 1917 1374">“Default” means any breach of the obligations of the Contractor (including but not limited to abandonment of this Contract in breach of its terms) or any other default (including material Default), words, act, omission, negligence or statement of the Contractor, of its Sub-contractors or any Staff, howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the</p>

Contractor is liable to the Authority.

“Deferral Notice” means the notice to be issued by the Authority in relation to Deferral of payment of Covid Monthly Payments.

“Participant” means an individual in respect of whom the Contractor provides Services who has been Referred to the Contractor by the Authority pursuant to the Contract.

“Referral” means the referral of an individual by the Authority to the Contractor under the Contract with the intention that the individual will become a Participant at the point of Participant Start, and

“Referred” shall be construed accordingly.

Covid Monthly Payment Deferral Failure” means failure by the Contractor to meet one or more of the Customer Service Standards in any CSS Measurement Period

1.1 At any time after a Contractor Termination Event has occurred, the Authority may, by notice to the Contractor:

- (a) cancel or suspend any outstanding Covid Monthly Payments whereupon they shall immediately be cancelled or suspended; and/or
- (a) cancel or suspend Referrals whereupon Referrals shall immediately be cancelled or suspended; and/or
- (b) require the Contractor to transfer all Participants and any and all information and support to effect a smooth transition and continuation of the Service to Participants to the Authority or such third party as the Authority may direct with effect on and from such date as the Authority may elect whereupon the Contractor shall immediately cease to have any right to receive any Covid Monthly Payments.

1.2 Where the Authority exercises its right to cancel the outstanding Covid Monthly Payments under clause 1.1(a), any Covid Monthly Payment amounts that are being deferred pursuant to clause 2 are also cancelled.

- 1.3 Where the Authority exercises its right to suspend the outstanding Covid Monthly Payment under clause 1.1(a):
- (a) any Covid Monthly Payment amounts that are being deferred pursuant to clause 2 are also suspended; and
 - (b) the operation of clause 2 is not otherwise affected.
- 2.1 Without prejudice to any other right or remedy available to it under this Contract including without limitation any rights it may have under either clause 1 above, provided by Law, in equity, or otherwise, the Authority may:
- (a) defer Covid Monthly Payments by the percentage amounts in relation to each contract set out in the table below and in accordance with clause 2.5
- | | |
|-----|--|
| RPC | Defer 15% of the Covid Monthly Payment |
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- and
- (a) forfeit any Covid Monthly Payments that have been deferred for a period of six (6) Months or more, in accordance with clause 2.9.
- 2.2 The Contractor shall ensure that at all times the Customer Service Standards are met or exceeded.
- 2.3 Failure by the Contractor to meet one or more of the Customer Service Standards in any CSS Measurement Period shall constitute a Covid Monthly Payment Deferral Failure.
- 2.4 The Authority will carry out a CSS Measurement Review at each CSS Measurement Point to review whether and the extent to which, during the relevant CSS Measurement Period the Contractor has met or exceeded the Customer Service Standards in order to determine whether there has been a Covid Monthly Payment Deferral Failure.
- 2.5 If, at a CSS Measurement Point, the Authority in its reasonable discretion is satisfied that, during

	<p>the relevant CSS Measurement Period there has been a Covid Monthly Payment Deferral Failure, then the Authority shall have the right to defer payment of any Covid Monthly Payment which is due for payment after that CSS Measurement Point. The amount of the Covid Monthly Payment deferred shall be in accordance with clause 2.1(a).</p> <p>2.6 If the Authority wishes to exercise its right to implement a deferral of the Covid Monthly Payment, the Authority shall issue a notice (a “Deferral Notice”). Such deferral Notice shall set out the CSS Measurement Point, the relevant CSS Measurement Period, the Covid Monthly Payment Deferral Failure and the date from which deferral shall commence.</p> <p>2.7 Deferral of Covid Monthly Payments shall continue until, at a CSS Measurement Point which follows the commencement of such deferral, the Authority is satisfied that during a CSS Measurement Period which follows the commencement of such deferral there has not been a Covid Monthly Payment Deferral Failure.</p> <p>2.8 When deferral of the Covid Monthly Payments ceases all Covid Monthly Payment amounts which:</p> <ul style="list-style-type: none"> (a) have been deferred; (b) have not been forfeited in accordance with clauses 2.10 to 2.13; (c) have not been cancelled in accordance with clause 1; and (d) are not suspended in accordance with clause 1; <p>will become payable.</p> <p>2.9 If deferral of Covid Monthly Payments is ongoing for a period of six (6) Months or more then the Authority shall have the right to forfeit any Covid Monthly Payments that have been deferred during that period.</p> <p>2.10 If the Authority wishes to exercise its right to forfeit Covid Monthly Payments in accordance with clause 2.9, the Authority shall issue a notice (a “Forfeiture Notice”). Such Forfeiture Notice shall set out the Covid Monthly Payments that are forfeited.</p> <p>2.11 The continuing deferral of Covid Monthly Payments, in accordance with clause 2.7, is not affected</p>
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	<p>by the exercise of the right to forfeit Covid Monthly Payments in accordance with clause 2.9.</p> <p>2.12 If deferral of Covid Monthly Payments is ongoing on the Referral Period End Date all Covid Monthly Payments which have been deferred are forfeited.</p> <p>2.13 The Contractor does not have any right to receive, and the Authority does not have any obligation to pay, any Covid Monthly Payments that are forfeited in accordance with clauses 2.9 to 2.13.</p>
	<p><u>Addendum 2: Not used</u></p>
<p>RPC, clause B16</p>	<p><i>For RPC, delete clause B16</i></p> <p><i>Replace the deleted provisions with Addendum 3</i></p> <p><u>Addendum 3: Performance Improvement</u></p> <p>Definitions</p> <p>“Performance Improvement Notice” means a written notice given by the Authority to the Contractor pursuant to this clause.</p> <p>“Performance Improvement End Date” means the date set out in the Performance Improvement Notice.</p> <p>“Performance Improvement Period” means the period from the date of issue of the Performance Improvement Notice until the Performance Improvement End Date.</p> <p>“Performance Improvement Plan” means the plan agreed in accordance with this clause.</p> <p>“Performance Improvement Plan Failure” has the meaning set out in this clause.</p> <p>“Performance Improvement Process” means the process set out in this clause.</p>

	<p>“Service Failure” means a failure by the Contractor to:</p> <ul style="list-style-type: none">(a) supply any part of the Services in accordance with the Tender Minimum Performance Levels (tMPLs); and/or(b) supply any part of the Services in accordance with any of the Customer Service Standards; and/or(c) achieve the RNOs. <ol style="list-style-type: none">1. Where the Authority believes that a Service Failure has occurred, the Authority may at any time (in its reasonable discretion) elect to give a Performance Improvement Notice to the Contractor in respect of such Service Failure and thereby initiate the Performance Improvement Process in accordance with this clause.2. The Authority may issue a Performance Improvement Notice and initiate the Performance Improvement Process at any time after the occurrence of a Service Failure3. Within no more than ten (10) Working Days following receipt of a Performance Improvement Notice the Contractor shall either:<ul style="list-style-type: none">(a) submit a draft Performance Improvement Plan; or(b) inform the Authority that it does not intend to submit a draft Performance Improvement Plan.4. In the event that the Contractor either fails to submit a draft Performance Plan or the Contractor informs the Authority that it does not intend to submit a draft Performance Improvement Plan the Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Contractor.5. Any subsequent Service Failure, which the Authority reasonably regards as being substantially the same in character to a Service Failure in respect of which a Performance Improvement Notice has been issued in accordance with this clause, which occurs not less than six (6) Months of the Performance Improvement End Date shall entitle the Authority to terminate the Contract by issuing a Termination Notice to the Contractor.
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	<u>Addendum 4: Not used</u>
	<u>Addendum 5: Not used</u>
	<u>Addendum 6: Not used</u>
	<u>Addendum 7: Not used</u>
	<u>Addendum 8: Not used</u>

Schedule 8: Removal of Certain Contract Requirements

Contract Type, Contract Provision	Modification
RPC, Schedule 6 paragraph 3.3	Currently, there are contractual requirements to provide a full and final Security Plan. These requirements are to be removed and replaced with a requirement to provide a single Contractor assurance that the security arrangements in place meet the Authority's and GDPR data security requirements and keep the Authority's information and systems safe. This is to be returned by 31 st January 2021 and annually thereafter.
RPC, Schedule 17 paragraph 2.2	<p>Currently, this clause states:</p> <p>As part of the information to be provided by the Contractor under paragraph Error! Reference source not found. of this Schedule Error! Reference source not found. (Life Chances), the Authority requires the Contractor to provide to the Authority:</p> <ul style="list-style-type: none"> (a) a diversity and equality delivery plan ("Diversity and Equality Delivery Plan") six (6) Months after the Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details of all Staff including but not limited to all Sub-contractors involved in the performance of the Contractor's obligations under the Contract. (b) details of the action(s) the Contractor is taking to support the Crown's social value agenda including but not limited to the action(s) the Contractor is taking to meet its obligations under paragraph Error! Reference source not found. of this Schedule. <p><u>This provision is to be removed</u></p>
RPC, Schedule 17 paragraph 2.6 – end of Schedule 17 (including	<p>Currently, clauses 2.6 to 2.11 state:</p> <p>2.6 The Contractor shall provide the Life Chances Workforce Monitoring template (contained in Appendix 1 to this Schedule Error! Reference source not found. (Life Chances)), as may be updated and</p>

<p>Appendix 1 to Schedule 17)</p>	<p>amended by the Authority from time to time, duly completed in full by the Contractor in respect of all Staff (including but not limited to all Sub-contractors used in the performance of the Contractor's obligations under the Contract), six (6) Months after the Commencement Date and annually thereafter</p> <p>2.7 The Contractor shall complete the Life Chances Workforce Monitoring template in line with the 'Life Chances through Procurement Guidance for DWP Contractors' and the contract definitions</p> <p>2.8 The Contractor will compare figures in all categories listed in the Appendix 1 - Workforce Monitoring template and provide (where possible) comparisons against any official national/regional statistics that are publicly available in accordance with the "Social Value Guidance for Contractors" provided by the Authority to the Contractor</p> <p>2.9 The 'Social Value Guidance for Contractors' provides links to a number of data collection sources, this is not an exhaustive list and other sources are available. The Authority recognises that there may be regional variations in terms of population demographics and some data categories and coverage may not be complete or fully aligned, however, the Contractor agrees to provide high level analysis and identification of trends as and when requested by the Authority.</p> <p>2.10 The Contractor shall provide and shall ensure that its Sub-contractors provide such evidence as the Authority may require of action(s) undertaken or planned by the Contractor and/or any Sub-contractor to improve the numbers in the Social Value Workforce Monitoring template (contained in Appendix 1 to this Schedule 17 (Life Chances)) to the satisfaction of the Authority.</p> <p>2.11 Diversity and Equality, the Crown's social value agenda and DWP Priority Groups will be discussed jointly by the Authority and the Contractor as an on-going item at Contract review meetings. Such meetings will discuss the information provided by the Contractor in accordance with paragraph 2.2 of this Schedule 17 (Life Chances).</p> <p><u>These provisions are to be removed</u></p>
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RPC, Schedule 7 paragraph 2.1	<p>Currently, this clause states:</p> <p>The Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs Error! Reference source not found. and Error! Reference source not found. of this Schedule, within three (3) Months of the Commencement Date and every 12 Months thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Contract and include all Sub-contractors involved in delivery of the Contract. The Contractor must obtain the required information from Sub-contractors and then collate and submit as stated above.</p> <p><u>This provision is to be removed</u></p>
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Schedule 9: Not used

Schedule 10: Provider Guidance

Contract Type, Contract Provision	Modification
<p>RPC, A1.1 RPC, F3.12</p>	<p><i>Insert a new definition of Covid-19 Provider Guidance into A1.1, as follows:</i></p> <p>“Covid-19 Provider Guidance” means any Provider Guidance issued by the Authority to the Contractor during the Covid Relief Period.</p> <p><i>Insert a new provision F3.12, as follows:</i></p> <p>F3.12</p> <ul style="list-style-type: none"> (a) In consequence of clause F3.7 the Authority shall have the ability to issue Covid-19 Provider Guidance to the Contractor at any time. (b) Any Covid-19 Provider Guidance issued to the Contractor shall have effect from the date of its issue or as otherwise specified in the Covid-19 Provider Guidance. (c) Covid-19 Provider Guidance shall supplement or replace Provider Guidance issued in the ordinary course of business. (d) Whether Covid-19 Provider Guidance supplements or replaces Provider Guidance issued in the ordinary course of business will be specified in the Covid-19 Provider Guidance. (e) Where there is any conflict between Covid-19 Provider Guidance and Provider Guidance issued in the ordinary course, the Covid-19 Provider Guidance shall prevail. (f) The Authority shall have the right to withdraw the Covid-19 Provider Guidance at any time, in whole or in part, after its issue and shall specify, by way of issue of a live running memo, when the Covid-19 Provider Guidance shall cease to have effect (the “Covid-19 Provider Guidance Expiry Date”). (g) The Covid-19 Provider Guidance shall, to the extent and manner specified in the live

	<p>running memo, cease to apply to the Contract on the occurrence of the Covid-19 Provider Guidance Expiry Date.</p> <p>(h) Following the occurrence of the Covid-19 Provider Guidance Expiry Date the Provider Guidance issued in the ordinary course shall continue to apply to the Contract.</p>
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Schedule 11: Not used

Contract Type, Contract Provision	Modification
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